



The Business We Have Chosen

By Robert A. Creo

Previous columns have addressed the lawyer's reputation, self-awareness, professional growth, the art of persuasion, navigating emotions and the importance of perpetual learning. This current series explores the importance of soft skills and the development of core competencies involved in decision-making and effective representation of clients. Upcoming columns will address both the science and the nuts and bolts of lawyer competency and contentment.

In "The Godfather: Part II" (1974), the gangster Hyman Roth (played by Lee Strasburg), has a confrontation with Michael Corleone (Al Pacino) after Corleone asked Roth, who had ordered the killing of another mobster, who gave the order. Roth explains that when his protégé, Moe Green, was killed in Las Vegas (on orders of Corleone), he did not ask who gave the order because he understood it was a business decision. He exclaims, "I let it go. I said to myself, this is the business we've chosen."

This iconic line has been used — and misused — many times to counter the inexplicable, to give context to irrational decisions or results or to justify a perilous course of action. Some may view it as a cop-out; however, many times it is an excellent shortcut to justify acceptance of the things we cannot, or will not, resolve or change. My research and experience as a lawyer for over four decades has led me to the conclusion that there are structural issues and fundamental realities of the nature of the practice of law that lawyers are wise to accept and accommodate to be both effective and content.

The Reality of Gravity

"Gravity" problems are structural facts or issues for which there are no actionable ways to reverse or ignore. There is no means to control and little means to influence "gravity reality," and successful professionals, especially lawyers, may find themselves frustrated, stressed or even miserable when confronting these realities. For example, in litigation, the judge has the ultimate power to make rulings within the broad scope of judicial discretion. Rules of procedure and evidence channel and limit choice. You are not free to do whatever

you want in a courtroom. Opposing counsel may call you out on even minor issues.

There are not many professions where there is someone purposely seeking to undermine or derail your objectives and work completely. A few come to mind. Obviously, professional athletes have direct competitors. Police and criminals are in opposition. Cybersecurity experts battle unseen arrays of clever hackers. Politicians face contested elections. The nature of military service is based on conflict prevention or war. In most professions, however, the challenges are not inherent in the fact that there are people opposing you. There are not teams of medical professionals purposely sabotaging the course of treatment. No one wants doctors to lose patients. Engineers, architects, journalists, accountants and teachers all face competitive challenges; however, these are from their professional peers who follow similar goals to produce a worthy end product or service. Commercial entities vying for market share or accounts may attack each other by name, but these attacks are usually isolated battles that are not central to the core work or mission of the organization. Usually success is possible based on your own skills, talent and creativity, applied to produce the best work possible to meet missions and objectives. A significant amount of lawyer time is expended to harness talent and marshal resources to prevail over opponents. You win and they lose.

Owner or Employee

The career bargain for practicing lawyers is basically limited to two categories: owner or employee. Owners work for private practice firms where they are sole decision-makers or have sufficient equity in the firm as partners to act independently. Employees are everyone else. They have a boss and a chain of command. Even if they are the top lawyer, there are corporate or governmental personnel who exert considerable control over them. Clients are the ultimate decision-makers.

There may be exceptions, such as judges and tenured law professors, but even they do not operate with unlimited discretion and action. They have president judges, appeals courts and deans.



All lawyers are directly or indirectly compensated for their time; directly by salary, bonus or billable hours, and indirectly for flat-fee or contingency work. The economic benefit is capped by the time they and their associates and paralegals work. Contingent and flat fees may result over time in hefty hourly rates, but the lawyer still has to put in the time. As is true for service providers and consultants, there is little opportunity for passive revenue for practicing lawyers.

Working Lawyers

Owners have autonomy, unlimited income potential and revenue streams subject to fluctuation and uncertainty over time. Owners have to generate and maintain a book of business. Clients come and go, often without warning.

Employees may have to produce sufficient high-quality output to maintain clients, but usually they do not produce new business. Employees lack autonomy, have limited income potential and may work fewer hours. Employees may receive additional compensation in the form of fringe benefits and paid leave.

Even in organizations that do not use the billable hour model, lawyers are often required to track their time. Lawyers work-

ing on salary are not immune to time pressures. Contingent or flat-fee practices may have a different dynamic driving behavior; compensation may not be correlated to hours at work, as lawyers often struggle with the feast or famine cycle of private practice.

Lawyers may fall into the pattern or trap of measuring every off-duty activity in six-minute increments and thus view certain events or activities with regret when the thin slice of time appears to have been wasted. Many lawyers spend leisure time lamenting their inability to be more productive or they create high expectations for fun or relaxation from the activity. Many of us have been someplace doing something and thinking that we would rather be working on our files.

Lawyers Love Golf

Although I do not golf, I believe that I understand why lawyers love the game. There is no one playing defense. The ball does not move by itself. The cup does not move. There is no time clock on each shot. Success is entirely due to one's own strategy and swing. You compete mostly against yourself. You do it outdoors in the sunlight amidst the greenest of spaces. You get muligans. There may be alcohol waiting at the

end. There is companionship, belonging and connection to others. You can golf with clients or colleagues to further business relationships. It is a safe harbor from the daily grind.

The Lawyer's Life for Me

I was uncertain how to punctuate the headline of this section. There were so many provocative symbols to use: The question mark. The exclamation point. The nonthreatening period. The ellipsis. Should I put quotation marks around all of it or just the word "life"? Among the millions of lawyers around the globe are many who are ambivalent about their chosen business. I select the word "business" even though the law is a learned profession because marketing, administration and nonlegal considerations are pervasive in any legal career. There are structural realities common across the legal landscape.

It's not only litigators who experience opposition to the meeting of objectives and goals in the performance of daily tasks. No matter how sweet the deal resulting from a win-win negotiation, there is always a competitive or distributive aspect to the final economic or other term or condition. A deal dollar in my pocket most likely came from the pocket of other parties to

WELCOME

Frank J. Macciocca

Esquire, CPA

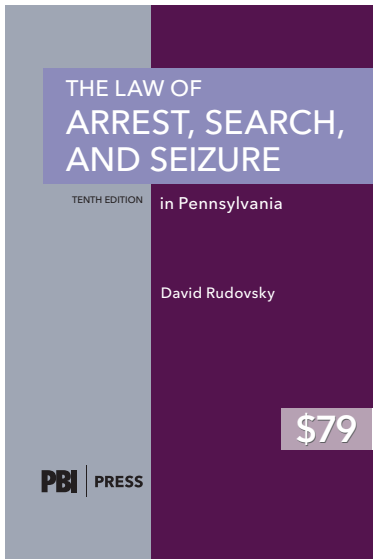
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THE EFFECTIVE LAWYER

the transaction. Uncertainty and future unknowns are expressly allocated during deal-making. These allocations may have significant economic or other impact. Even work considered more routine, such as regulatory filings or simple document preparation, requires a degree of skill and care to ensure that the client is fully compliant under the law. I still consider the regulatory framework as part and parcel of an adversarial culture since there are institutional mandates or challenges that must be met by the lawyer. Statutes, rules and regulations do not provide active opposition, but nevertheless present barriers and pitfalls that must be addressed on behalf of clients. Most forms of representation involve some level of advocacy to pursue affirmative interests or to avoid running afoul of prohibitions enforced by law.

Working in an environment where someone says no to you is difficult and uncomfortable. Most lawyers have opposing counsel or others with whom they prefer not to communicate directly. Email has made it easy to dash off a negative communication with or without nastiness. Incivility plagues litigation and is all too present in other practice areas. Even the heartiest of warriors may be negatively affected by continuous war or conflict. Battle enacts a personal toll even when victorious or survived without visible scars.

Making a Deal in the Chosen Business
 Work-life balance is a worthwhile concept, but it isn't enough, nor will it work for everyone. It lacks a suitable method to deal with the hours at work. This is the bulk of time spent awake. Work is life, and living, too. Law professionals must engage and embrace their work with agility, adaptability and healthy attitudes and habits. Profes-

sional development is multifaceted and encompasses far more than legal, analytical and persuasion skills. Soft skills are observable, measurable and teachable. The mastery of legal acumen and soft skills, and a quest for satisfaction and contentment in your daily work lead to not only peak performance, but also to a grounded, successful life practicing your chosen business.



Pittsburgh attorney Robert A. Creo has practiced as an in-house corporate lawyer and a solo and small firm general practitioner before focusing on being a neutral. He has mediated and arbitrated thousands of cases, including as a salary arbitrator for Major League Baseball, a grievance arbitrator for the National Football League and a hearing officer for the U.S. Senate Select Committee on Ethics Office of Fair Employment Practices. Since 1996, he has been on the mediator roster of the Court of Arbitration for Sports in Lausanne, Switzerland, which provides ADR services for international sports, including the Olympics. Since 1991, he has served as adjunct professor at Duquesne University School of Law and the University of Pittsburgh School of Law. He is the 2018 recipient of the PBA ADR Committee Sir Francis Bacon Alternative Dispute Resolution Award. He is annually included in *Best Lawyers in America* and named as a Superlawyer. He has a passion for storytelling and is a frequent presenter at The Moth in Pittsburgh, Twin Cities, and elsewhere. He is the principal of Happy! Effective Lawyer LLC (www.happy.lawyer) and author of *The Effective Lawyer* blog (<https://happyeffectivelawyer.org/>). His website is www.robertcreo.com.

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TAKEAWAYS

- Structural issues are not malleable, so the lawyer must adjust.
- There is active or passive resistance to most daily lawyer functions.
- Soft skills are observable, teachable and measurable.
- Work-life balance is a false duality that won't result in job satisfaction.